IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELALTE SIDE JURISDICTION

Writ Petition No.1244 of 2007

Wanbury Limited and Anr .. Petitioners
vs
Navi Mumbai Mun Corpn and Ors. ..Respondents

Mr. Janak Dwarkadas and Mr. Federun D'vitre, Senior Advocates, with Ms Neha Pathak i/b M/s D.H. Law Associates for the petitioners

Mr. R.S. Apte with Mr A.A. Garge for respondent Nos. 1 and 2

with Writ Petition No.1359 of 2007

Bajaj Auto Limited .. Petitioners
vs
Navi Mumbai Mun Corpn and Ors. ..Respondents

Mr. Vineet Naik i/b Malvi Ranchoddas & Co
for the petitioners

Mr. R.S. Apte with Mr A.A. Garge for respondent No. 1
Mr. G.S. Hegde for respondent No 2
Ms Jyoti Pawar, Addl G.P. For respondent Nos 3 and 4
Dr Virendra Tulzapurkar Senior Advocate with Mr. R.D. Soni for respondent No.5.

With Writ Petition No.1361 of 2007

Birla Sunlife Ins Co Ltd and Anr .. Petitioners
vs
Navi Mumbai Mun Corpn and Ors. ..Respondents

Dr Virendra Tulzapurkar, Senior Advocate, with Mr Devansh Mohta and Ms Neha Pathak i/b M/s D.H. Law Associates
for the petitioners

Mr. R.S. Apte with Mr A.A. Garge for respondent Nos. 1 and 2
with Writ Petition No.1408 of 2007

Hutchison Essar Ltd. .. Petitioners
vs
The State of Maharashtra and Ors. ..Respondents

Mr. C.U. Singh, Senior Advocates, with Ms Deepa Chavan and Mr. Punit B Anand for the petitioners
Ms Jyoti Pawar Addl. G.P. for respondent No.1
Mr. R.S. Apte with Mr A.A. Garge for respondent Nos. 2 and 3

with Writ Petition No.1397 of 2007

BSEL Infrastructure Realty Ltd .. Petitioners
vs
Navi Mumbai Mun Corpn and Ors. ..Respondents

Dr Virendra Tulzapurkar, Senior Advocate, with Mr R.D. Soni i/b M/s Ram and Co. for the petitioners

Mr. R.S. Apte with Mr A.A. Garge for respondent No.1

Mr G.S. Hegde for respondent No.2

Ms Jyoti Pawar, Addl G.P. For respondent Nos.3 and 4

CORAM: H.L GOKHALE,Acg C.J. ,&
V.M.KANADE, J.
DATE: March 1, 2007.

P.C.:-

Writ Petition No.1244 of 2007 is filed by a Pharmaceutical company, Writ Petition No.1359 of 2007 is filed by an Automobile Company, Writ Petition No. 1361 of 2007 is filed an Insurance Company, and Writ Petition No. 1408 of 2007 (which was not on board but is taken up on mentioning), is filed by a cellular service provider. All these petitioners are allottees/occupiers of certain premises in a building which has

been developed by one BSEL Infrastructure Realty Limited, which has filed Writ Petition No. 1397 of 2007.

2. The first four petitioners have been issued orders of sealing with respect to their premises by the Navi Mumbai Municipal Corporation, hereinafter called as the Corporation. This has been done by the Corporation principally on the ground that they have not conformed to the user, for which the premises were supposed to be used. The case of the Corporation is that under the Development Control Regulation Rules, this particular plot of land and the building developed therein, is meant for software industries and for no other purposes. It is for this purpose that double the normal FSI (i.e. FSI 3 instead of 1.5) has been permitted for their plots and therefore; the entire FSI must be used only for the software industry. As against that, the submission of the allottees/ occupiers is that under the relevant resolution of the Industries Department issued much earlier, 40% of the Built Up Area (BUA) can be used for the purpose, other than the software or IT purposes and in any case, at least 20% built up area can be used as per the subsequent Government Resolution, also by the Industries Department. The BSEL Infrastructures Ltd., which has filed Writ Petition No. 1397 of 2007 has tendered a

chart,which shows that only 18% of the entire BUA has been used for non IT purposes. That is on the merits of he submissions of the rival parties with respect to the usage of the premises.

3. On the procedural aspect, the submission of the petitioners is that the kind of method which the Corporation has used is not permissible under the law. The sealing orders, according to them, are in breach of the principles of natural justice for two reasons. Firstly, no proper and fair hearing was given before any such orders were passed and secondly, no reasons have been given or incorporated in the orders of sealing. Reliance is placed on section 53 of the Maharashtra Regional and Town Planning Act, 1966 and it is submitted that though this section gives power to the Corporation to remove the unauthorised development or user, the principles of natural justice will have to be read into these provisions and which have been violated by the Corporation.

4. Before we examine the submissions of the rival parties, it will be necessary to refer to section 53 which reads as follows:

“53. Power to require removal of unauthorised development:-

(1) Where any development of land has been carried as indicated in sub-section (1) of section 52, the Planning Authority may, subject to the provisions of this section serve on the owner a notice requiring him, within such period, being not less than one month, as may be specified therein after the service of the notice, to take such steps as may be specified in the notice.

(a) in cases specified in clause (a) or © of sub-section (1) of section 52 to restore the land to its condition existing before the said development took place.

(b) in cases prescribed in clause (b) or (d) of sub-section (1) of section 52, to secure compliance with the conditions or with the permission as modified;

Provided that, where the notice requires the discontinuance of any use of land, the Planning Authority shall serve a notice on the occupier also,

(2) In particular, such notice may, for purposes of sub-section (1), require-

(a) the demolition or alteration of any building or works,

(b) the carrying out on land any building or other operations, or

(c) the discontinuance of any use of land.

(3) Any person aggrieved by such notice may, within the period specified in the notice and in the manner prescribed , apply for permission under section 44 for retention on the land of any building or works or for the continuance of any use of the land, ,to which the notice relates, the pending the final determination or withdrawal of the application, the mere notice itself shall not affect the retention of buildings or works or the continuance of such use.

(4) The foregoing provisions of this chapter shall, so far as may be applicable, apply to an application made under sub-section (2).

(5) If the permission applied for is granted, the notice shall stand withdrawn, but if the permission applied for is not granted, the notice shall stand, or if such permission is granted for the retention only of some buildings, or works, or for the continuance

of use only a part of th land, the notice shall stand withdrawn as respect such buildings or works or such part of the land, but shall stand as respects other buildings or works or other part of the land, as the case may be, and thereupon, the owner shall be required to take steps specified in the notice under sub-section (1) as respects such other buildings, works or part of the land.

(6)If within the period specified in the notice or within the same period after the disposal of the application under sub-section (4), the notice or so much of it as stands is not complied with, the Planning Authority may-

(a)prosecute the owner for not complying with the notice, and where the notice requires the discontinuance of any use of land any other person also who uses the land or causes or permits the land to be used in contravention of the notice, and

b) where the notice requires the demolition or alteration of any building or works carrying out of any building or other operations, itself cause the restoration of the land to its condition before the development took place and secure compliance

with the conditions of the permission or with the permission as modified by taking such steps as the Planning Authority may consider necessary including demolition or alteration of any building or works or carrying out of any building or other operations and recover the amount of any expenses incurred by it in this behalf from the owner as arrears of land revenue.

(7) Any person prosecuted under clause (a) of sub-section (60 shall, on conviction, (be punished with imprisonment for a term (which shall not be less than one month but which may extend to three years and with fine which shall not be less than two thousand rupees but .which may extend to five thousand rupees, and in the case of a continuing offence with a further daily fine which may extend to two hundred rupees) for every day during which such offence continues after conviction for the first commission of the offence".

5. Section 53(3) thus permits a party, which is aggrieved by the notice calling upon the party concerned to remove the unauthorised construction or unauthorised user, to apply for

permission for retention of the land or building or works or for continuance of any use of land, to which the notice relates. In the instant case it has been pointed out by one of the parties i.e. Hutchison Essar Ltd that they have made a specific application under sub-section (3) of section 53 of the MRTP Act. Inasmuch as section 53(3) refers to section 44, it has to be noted that section 44 provides for an application for permission for development. Section 45 provides for grant or refusal of the permission and consequent appeal has been provided under section 47 against an order refusing permission under section 45. This appeal is available for a period of 40 days from the date of communication of the order to the party concerned and the appeal is to be preferred to the State Government. The petitioners contend that inasmuch as sealing of premises and/or stoppage of user or removal of the unauthorised construction result into civil consequences, hearing and reasoned orders are something minimum.

6. Mr. Apte, learned counsel appearing for the Corporation, on the other hand submits that in the instant case a notice of 30 days was given to the petitioners. The Corporation waited for this entire period and there was no other alternative but to stop the user which could only be by the method of sealing the

premises. This is what the Corporation has done. Mr. Apte submits that it is permissible for the Corporation to take such a specific step under sub-section (1) of section 53 which provides that it may take such steps as may be specified in the notice. Mr. Apte states that in some of the notices, sealing of premises has been specifically mentioned and in some of the notices it has been stated that the user will be discontinued.

7. We have noted the rival submissions of the learned counsel appearing for the parties. As stated above, an action such as stoppage of the user or removal of construction, is undoubtedly an action resulting into civil consequence. The law has been laid in the case of Union of India vs J.N. Sinha (1970) 2 SCC 458 and C.B Gautam vs Union of India and Ors- (1993) 1 SCC 78 (AIR 1994 SC 771), that wherever civil consequence result from an action of public authorities, principles of natural justice have to be read into the provisions. In the circumstances, in the instant case, we have no option but to read the compliance of at least these two requirements i.e. providing hearing and passing reasoned order into the provisions of section 53 of the MRTP Act. For this reason and without going into the merits of the submissions of the parties, we will have to and we set aside the impugned orders of

sealing. The Corporation will remove the seals and permit the parties to carry on their business. The Corporation may call the parties concerned for hearing at the earliest and after hearing, pass appropriate orders. We further direct that the orders to be passed, if adverse to the parties concerned, shall not be implemented for a period of four weeks, after the same are communicated to them.

7. We are told that similar notices have been issued to some other parties. The Corporation is directed to follow the same procedure with respect to other parties though those parties may not have filed any Writ Petition. The Corporation will not require them to file petitions, but remove the seals on its own. The Corporation will remove the seals by 3.p.m. on 2.3.2007.

8. In view of the above observations, no separate order is necessary in Writ Petition No.1397 of 2007 which is filed by the Developer.

9. We make it clear that we have not given any findings on the submissions, either of the Developers or allottees/occupiers on the one hand, and the Corporation on the other hand, with respect to the alleged unauthorised user of the premises and

all the issues on merits are left open. That will be looked into as and when occasion arises.

10. With the above observations, all the writ petitions are disposed of with no order as to costs.

11. Mr. Apte, at this stage, prays for stay of this order. In the facts and circumstances of the case, there cannot be any such stay. Request is rejected.

ACTING CHIEF JUSTICE

V.M.KANADE, J.